



POLICE DEPARTMENT CITY OF NEW YORK

October 17, 2017

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Ian Rule
Tax Registry No. 919661
6 Precinct
Disciplinary Case Nos. 2016-15348 & 2016-16054

Charges and Specifications:

Case No. 2016-15348

1. Lieutenant Ian Rule, on or about October 25, 2015, at approximately 0355 hours, while assigned to the 6th Precinct and on duty, in the vicinity of 75 Christopher Street, New York County, was discourteous [sic] to Robert Jennings, in that he smacked a cellular telephone out of his hands.
P.G. 203-09, Page 1, Paragraph 2 – DISCOURTESY
2. Lieutenant Ian Rule, on or about October 25, 2015, at approximately 0355 hours, while assigned to the 6th Precinct and on duty, in the vicinity of 75 Christopher Street, New York County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department, in that he authorized the issuance of a summons to Robert Jennings for disorderly conduct, without sufficient legal authority.
P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT– PROHIBITED CONDUCT

Case No. 2016-16054

1. LT [sic] Ian Rule, on or about February 13, 2016, at approximately 0055 [sic], while assigned to 006 PCT [sic] and on duty, in the vicinity of in front of [sic] 144 West 4th Street, New York County, wrongfully used force, in that he hit Julian Day against a vehicle without police necessity.
P.G. 203-11 – USE OF FORCE

Appearances:

For CCRB-APU: Simone Manigo, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, NY 10007

For Respondent: James Moschella, Esq.
Karasyk & Moschella, LLP
233 Broadway, 32nd Floor
New York, New York 10007

Hearing Dates:

June 16, July 20, and August 31, 2017

Decision:

Case No. 2016-15348

Respondent is found Guilty

Case No. 2016-16054

Respondent is found Not Guilty

Trial Commissioner:

ADCT Robert W. Vinal

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on June 16, 2017, July 20, 2017 and August 31, 2017. The CCRB Administrative Prosecutor called Robert Jennings and Julian Day as witnesses and offered the out-of-court statement of Person A. Respondent called Police Officers Craig Sikorski and Joseph Tennariello as witnesses and he testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Guilty of the misconduct charged under Case No. 2016-15348 and Not Guilty of the misconduct charged under Case No. 2016-16054.

FINDINGS AND ANALYSIS

Evidence Presented Regarding Case No. 2016-15348

Many of the facts regarding the interaction between Respondent and Robert Jennings on October 25, 2015 are not disputed. It is not contested that on that night, Respondent was

assigned to the 6th Precinct and on duty serving as the Special Operations Lieutenant in an unmarked vehicle supervising Police Officer Craig Sikorski, who was serving as his driver. At about 0355 hours, they responded to a radio transmission that an assault was taking place in the vicinity of 75 Christopher Street, Manhattan. Upon arriving at that location, they observed that Police Officer Brian Benevenuto was engaged in an interaction with Jennings. Based on Jennings' behavior during this interaction, Respondent directed that Jennings be handcuffed and transported to the 6th Precinct. At the precinct, Respondent authorized the issuance of a summons to Jennings charging him with Disorderly Conduct.

Jennings testified at this trial that on October 25, 2015 at about 0355 hours, he was in the vicinity of 75 Christopher Street, Manhattan. He was standing on the sidewalk in front of the Fat Cat Club next to the railing of a subway entrance trying to hail a taxi cab when a "black detective car" pulled up and stopped in front of him. Officer Benevenuto, who was in uniform, jumped out of the car and, without saying a word to Jennings, pushed him into the subway railing. Jennings asked Benevenuto, "What the fuck you doing? What the fuck did you push me for?" When he was told to produce ID, he asked, "What's this about?" He was told to "shut the fuck up." Jennings told Benevenuto, "you shut the fuck up," and that he did not have the right to put his hands on Jennings.

Jennings then saw Respondent, who Jennings recognized from a street encounter which had taken place two weeks earlier, get out of the car and came over to where Benevenuto and Jennings were standing face to face. Jennings handed Respondent his "benefit card" as ID and told Respondent, "This is bullshit. You just had my ID two weeks ago." As Respondent turned around and started walking back to the car, Jennings heard him say "something about a robbery." Jennings asked Benevenuto, "Am I under arrest?" When Benevenuto replied "no," Jennings

reached into his pocket and started to take out his cell phone. Respondent looked at Jennings, walked back over to him, and smacked the phone out of Jennings' hand onto the sidewalk. When Jennings reached down to try to pick up his phone, Respondent told him, "Stand up! Get up!" Respondent then put him up against the subway wall and told him, "You want to be a smart ass? You're under arrest." Respondent told him, "I know you Jennings." He replied, "I know you too." He was told to turn around. When he complied, he felt a knee on his back. He told Respondent, "I'm going to sue you." He was handcuffed, placed in a police van, and transported to the 6th Precinct.

On cross-examination, Jennings agreed that at the stationhouse Benevenuto had apologized to him for having pushed him. Jennings confirmed that he is a former drug user, that he had once pleaded guilty to having committed Criminal Sale of a Controlled Substance in the Fifth Degree, a class D felony, and that during the 1980s and 1990s, he had been convicted of Disorderly Conduct five times and Criminal Trespass twice. [Respondent's Exhibit (Resp. Ex.) A]. However, he asserted that he has been "clean for ten years."

Police Officer Craig Sikorski testified that he saw that Jennings was holding a cell phone in his hand. Sikorski's attention was directed away from Jennings for five or six minutes. When he next looked over to where Jennings was standing, he saw the cell phone on the ground.

Respondent testified that the initial radio transmission of an assault was changed to a robbery when the victim asserted that property had been taken from him after he was assaulted by at least four perpetrators.¹ Officers Benevenuto and Castiello had been the first responders to the scene and had put over a description of the perpetrators. Respondent and Sikorski canvassed the area in their car, but were unsuccessful in locating any of the suspects. When Respondent

¹ Person A who was interviewed by CCRB on Nov. 19, 2015 [CCRB Ex. 8].

heard a radio transmission from Benevenuto that he had stopped a suspect at 7th Avenue and Christopher Street, he and Sikorski quickly drove to the location.

Upon arriving, he observed a small crowd of at least fifteen people in the street and Officer Benevenuto face-to-face, just inches from Jennings, who Respondent described as "very large" and yelling "really loud." Respondent walked toward Jennings, who was not listening to Benevenuto's commands to step back. Jennings continued to yell and ignored Respondent's subsequent command to back up. Respondent believed, though he was not certain, that he saw Jennings touch Benevenuto, but that it was not a punch or slap. At that point, Respondent explained, Jennings was "under arrest in my mind" for Disorderly Conduct. Respondent testified that he had no information at this point as to whether Jennings was also involved in the robbery and his decision to place him under arrest was solely based on the disorderly conduct he had observed.

Respondent and Benevenuto, with Sikorski's assistance, handcuffed Jennings, who had "stiffened his arms a little bit," not "making it easy for us" after about 30 seconds of grappling to get his arms. Respondent recalled that Jennings was yelling to "lock him up, he needs free money," in a way that he perceived as baiting the crowd. He testified that he never saw a cell phone in Jennings's hands. Respondent denied that he had slapped Jennings' phone out of his hands, explaining, "I grabbed his arm to handcuff him . . . I don't know if he had anything in his hands or not." Jennings did not go to the ground at any point and he did not see a cell phone on the ground at any point.

A police van then arrived at the scene to transport Jennings and another individual who had been arrested after being identified as part of the robbery. Respondent remained at the scene, continuing with the robbery investigation. During this time, the robbery complainant

identified Jennings "as possibly," though not positively, being involved in the robbery.

Respondent returned to the precinct and discussed with Benevenuto that the best course of action for Jennings would be to release him with a disorderly conduct summons, explaining that he had no warrants and had calmed down at the precinct. He asserted that releasing Jennings at the scene with a summons would not have been appropriate given the tumultuous nature of his behavior at that time.

Analysis Regarding Case No. 2016-15348

Specification No. 1

It is charged that Respondent was discourteous to Jennings in that he smacked a cellular telephone out of Jennings' hand. Jennings testified at this trial that Respondent smacked the hand in which he was holding his cell phone which caused the cell phone to fall out of his hand onto the pavement. Although Respondent confirmed that he had grabbed Jennings' arms in order to handcuff him, he denied that he had smacked a cell phone out of Jennings' hand and he testified that he never saw a cell phone in either of Jennings' hands or on the ground.

Jennings' testimony has the ring of truth in that if he was inventing a false allegation that Respondent had treated him badly in order to cause trouble for Respondent, it is likely that he would have claimed that Respondent had done more than merely slap his phone out of his hand. Most significantly, Jennings' testimony that he was holding his cell phone in his hand, and that his phone wound up on the ground, was corroborated by Sikorski's testimony that he saw Jennings holding a cell phone in his hand and that, five to six minutes later, he saw this cell phone on the ground. Since Sikorski had no reason to offer false testimony regarding his two separate observations of Jennings' cell phone, I credit his testimony.

Based on Sikorski's testimony that Jennings had a cell phone in his hand and that shortly

thereafter the cell phone was on the ground, the only two reasonable explanations for why the cell phone fell to the ground are that it was knocked out of Jennings' hand or that he threw it or dropped it. If the cell phone had fallen out of Jennings' hand as a result of Respondent's action of grabbing Jennings' arms to place handcuffs on him, it is likely that Respondent would have noticed the phone falling out of his hand and/or hitting the pavement. Since Sikorski clearly saw the cell phone on the ground, and since Respondent was standing next to Jennings, I cannot credit Respondent's claim that he did not see a cell phone on the ground.

Based on the above analysis, I find Respondent Guilty of Specification No. 1.

Specification No. 2

It is charged that Respondent engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department in that, without having sufficient legal authority to do so, he authorized the issuance of a summons to Jennings which charged him with Disorderly conduct. The summons that was issued to Jennings [CCRB Ex. 1] alleged that he had violated subdivision 6 of Penal Law §240.20, Disorderly conduct. This subdivision states that a person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, he recklessly creates a risk thereof, by congregating with other persons in a public place and refuses to comply with a lawful order of the police to disperse.

Respondent testified that he determined that Jennings should be arrested for Disorderly Conduct because a small crowd was on the street; Jennings was yelling "I want free money!"; he was face-to-face with Benvenuto and ignored Respondent's order to back up; and because he believed, although he admitted that he was not certain, that Jennings had touched Benevenuto. Respondent offered no testimony that Jennings had intentionally caused, or recklessly created a risk of, any real public inconvenience, annoyance or alarm; Respondent offered no testimony

that Jennings was congregating with other persons; and Respondent offered no testimony that either he or Benevenuto had issued an order to Jennings to disperse, much less that Jennings had refused to comply with a lawful order to disperse. Thus, based on Respondent's own testimony, Jennings' conduct never reached the point of creating a potential or immediate public problem.²

The facts here are somewhat similar to the facts in *People v. Baker*. 20 N.Y.3d 354 (2013), where the Court of Appeals held that no basis existed to support a disorderly conduct arrest because the facts were not sufficient to establish the public harm element of the offense. In that case, a police officer approached a woman who was videotaping a man (later determined to be her boyfriend) across the street in a Cadillac. The officer approached the woman and asked who owned the vehicle. Moments later, her boyfriend approached the officer's patrol car window and began swearing at the officer, accusing him of harassing the couple. The outburst was brief but it caused about ten people to gather on the sidewalk. The Court distinguished the facts in *Baker* from *Weaver* where a "public spectacle" was created by defendant yelling at his wife before beginning to shout at officers who tried to assist her. The Court also noted that "this case includes one more factor worthy of consideration. Here, both at its inception and conclusion, the verbal exchange was between a single civilian and a police officer. The fact that defendant's abusive statements were directed exclusively at a police officer--a party trained to defuse situations involving angry or emotionally distraught persons--further undermines any inference that there was a threat of public harm" and "coarse language to criticize the actions of a police officer, unaccompanied by provocative acts or other aggravating circumstances, will rarely afford a sufficient basis to infer the presence of the 'public harm' *mens rea* necessary to support a disorderly conduct charge."

² See *People v. Weaver*, 16 N.Y.3d 123 (2011); see also *People v. Poole*, 128 A.D.3d 576 (1st Dep't 2015).

Based on the above analysis, I find Respondent Guilty of Specification No. 2.

Evidence Presented Regarding Case No. 2016-16054

Many of the facts regarding the encounter between Respondent and Julian Day on February 13, 2016, are not contested. It is not contested that on that date, Respondent was supervising an Anti-crime Team consisting of Police Officers Craig Sikorski and Joseph Tennariello. They were all wearing plainclothes and patrolling in an unmarked Department Ford Escape in the area of West 4th Street, Manhattan. It is not disputed that Julian Day was driving his car in the area of West 4th Street and that his friend [REDACTED] was seated in the front passenger seat of his vehicle.

Day testified at this trial that as he was driving toward a traffic light at the intersection at West 4th Street and 6th Avenue, although the traffic light was green, a taxi that was in front of his car did not immediately proceed through the light and so he flashed his lights at the taxi driver. After he had viewed a traffic surveillance video depicting his car at the corner of West 4th and Cornelia [CCRB Ex. 3], he acknowledged that he did not bring his car to a full stop at the stop sign at that intersection prior to proceeding through the traffic light. He explained that he was "following traffic" and did not realize the stop sign was there. As he crossed 6th Avenue, a Ford Explorer behind him activated lights and sirens. He pulled over to the left, thinking the unmarked police vehicle would pass him. He then pulled over to the right, on the south side of W. 4th Street, and two officers approached his window, one standing behind the other, and another approached the passenger side. The officer closest to him asked for ID, which he said he presented, and the officer on the passenger side nodded, "you know like tell him to get out of the car." He told his friend, who had started to roll down the passenger window, not to roll the window down because "you never know what's going to happen." He directed her not to make

sudden moves and warned that she could get shot. Day stated that the officers "took him out" of the vehicle, but then clarified that he opened the door himself and stepped out. He did not believe he had committed a traffic infraction but denied feeling aggravated that he was pulled over.

After he stepped out, the officer who had first approached his window began searching his jacket pockets, retrieving a "little bag" of weed from his left jacket pocket. Day testified that the "Italian officer" and the other officer who had been on the driver's side then put him on the back of the car, facing the hatchback and started "searching me more." He asked why he had been stopped and told the officers three times not to go inside his jeans pocket, that they could "search from the outside," though he contended his demeanor was "cool" and "calm." He explained he said this because he had "been through it before" with a police officer taking money out of his pockets. After he said this, the officers became "a little rowdy" and aggressive. He acknowledged that in his phone call to IAB from [REDACTED] Hospital immediately after his arrest, he told the investigator that when the officer got "rowdy," he in turn got "rowdy with him," telling the officer, "You are not going to sit there and talk to me like I'm some little kid. I did what you asked me to do and you pulled me over. Wrong. You got no reason to pull me over. No reason whatsoever." He also told the investigator he got "real mad" when the officer went in his pocket. Day alleged that they began searching him more, taking contact lens solution out of his left pants pocket, handcuffing him and trying to "tussle" with him on the back of the car. The officer who asked him to get out of the car, kned him in the back of his leg trying to "take [him] down," even though he claimed he was not "doing nothing" and not moving. He was laying with his head on the top of the car above the glass, in handcuffs, with his body against the trunk at this point. He denied turning towards the officer but when confronted with his statement to IAB, he

agreed that he had leaned his head to the right to tell the officer not to go in his pockets. He also told IAB that he then put his hands behind his back, clarifying at trial that he did not specifically explain to the investigator that he was already handcuffed.

Day recounted that the officer that had been at the passenger window, came around to the rear of the car and using two hands, lifted his head and slammed it into the car. The left side of his head made contact with the top of vehicle. The officer who slammed his head, he believed, had "some type of authority" because the other officers had been looking to him when they first approached his window.

Day recalled that his neck felt stiff afterward. At the precinct, his earlobe was "burning" and he realized it was bleeding. He did not complain about the injury to the officers and in fact denied medical attention "because I was going to go to the hospital afterwards." He also claimed to suffer headaches and migraines as a result of the blow to his head.

Day testified that he advised the desk officer at the precinct that his head was slammed into his car. He asked why the officer had done that and wanted an apology. He claimed that officer responded, "I ain't giving you no apology," but the officer who had approached on the driver's side did apologize. On cross-examination, he conceded that he also apologized to the officers for being loud, explained he had been pulled over recently and said he "didn't mean to do any of that," though he denied having threatened the officers at any point.

Day testified that at the precinct, he was told by the officer who approached his window that he had been stopped for tinted windows and failing to signal on a turn. He asserted that he had been going straight. According to Day, no officer mentioned his failure to stop at a stop sign. He stated that he was charged with disorderly conduct and possession of marijuana, but represented that the case was ultimately dismissed after ten months and multiple court dates.

On cross-examination, Day agreed that he had been arrested by members of the Department on numerous occasions in the past and stopped multiple times, not resulting in criminal charges, in the year prior to this incident. In 2015, he pled guilty to driving while his ability was impaired by alcohol and to disorderly conduct. He also had a previous misdemeanor conviction for aggravated unlicensed operation of a motor vehicle. When asked if it would be fair to say that he did not like police officers, he indicated that was not a fair characterization. The officers involved in this incident were not known to Day prior to the car stop.

Police Officer Joseph Tennariello testified that on the night in question, he was working anti-crime patrol as the operator of an unmarked RMP with Respondent, who had been his supervisor for about three years, and Officer Sikorski. He first noticed Mr. Day when he observed him make a reckless turn around another vehicle and then "bl[ow] through a stop sign." As Day crossed 6th Avenue, Tennariello activated his lights to pull him over. He approached the driver's window and, as soon as Day rolled it down, noticed a smell of marijuana. According to Tennariello, Day was "immediately irate . . . screaming at me. He didn't even give me a chance to talk . . . to tell him why I pulled him over." Day refused to present ID, cursing and saying this happens all the time with cops, and also cursed at the woman in the passenger seat when she began to roll down the passenger window. He explained that he was concerned Day might be hiding a weapon because he was so irate and refusing to show ID.

After repeated requests for ID, Tennariello had Day step out of the vehicle, which he did willingly. At that point, he handed over his ID and went to the back of the car where Sikorski frisked him for weapons. Tennariello remained briefly by the driver's window with the license. He recalled that Day continued to yell about being stopped and told Sikorski not to go in his pockets, even though Sikorski had not yet done so. He testified that as Sikorski frisked his waist

area, Day flailed his arms, which had been on top of the vehicle, and slapped Sikorski's hands away. He and Respondent rushed to help Sikorski, who had wrapped Day in a bear hug, to pin his body against the vehicle and prevent him from reaching for anything. He testified that Day, who was still yelling and facing the rear of the vehicle, was pushing off of the vehicle with his body and would not give up his hands. He denied seeing Respondent slam Day's head into the car, explaining "if anything, we had him just pinned against the vehicle just to constrict him from moving but I can't say I recall him taking his head and bouncing it off the car, no." He offered that Day's head might have made contact with the top of the car "if we had him pinned against the car, maybe he laid his head on there but not... like in a bouncing motion." He estimated all of this transpired in about 20 seconds from the time Day was brought to the back of the vehicle.

Tennariello recounted that as soon as Day was handcuffed, no additional force was used and he stood still at the rear of the car, no longer pinned. He did not specifically recall the circumstances under which Sikorski recovered the marijuana, though he agreed a search was conducted at the scene after Day was handcuffed. He was with Day for roughly an hour at the precinct and did not observe injuries to his face or ear, nor did he hear Day complain of injury.

Police Officer Craig Sikorski testified that while he was standing behind Tennariello at the driver's window, he noticed a smell of marijuana as soon as the window was rolled down and recalled that Day was immediately combative, refusing to present ID and demanding to know why he was stopped. He testified that Respondent knocked on the passenger window and a woman began to roll it down until Day told her not to touch "my fucking car" and reached over to roll the window back up. Tennariello directed Day to step out of the vehicle and go to the back the car with Sikorski, which he did without physical intervention from the officers. Sikorski recalled that though Day was rolling his eyes and seemed agitated about the stop, he

was "for the most part compliant with me," turning to the face the vehicle and putting his hands on top of the car.

Sikorski informed Day that he had smelled marijuana and asked if he had any on his person or in the car. He testified that Day responded that "he wasn't going to snitch on himself and to do your fucking job." He frisked Day, who was initially compliant until Sikorski felt a hard object from the outside of his right pants pocket. As he moved his hand to reach into the pocket, Day slapped it away, saying in a "slightly" raised voice, "you can't go in my pocket. Don't fucking touch me." Concerned he might be concealing a weapon and fearing for his safety, Sikorski wrapped both his arms around Day in a bear hug and used his body weight against Day's torso to put him up against the car, trying to restrict his movement and handcuff him. As he struggled to keep Day against the vehicle, Respondent and Tennariello came to his aid, each taking one of Day's arms. Sikorski helped Tennariello with the left arm and testified that Day's body made contact with the vehicle from his mid-section to lower chest. At no point did he see Day's head make contact with the vehicle. He specifically denied seeing Respondent lift Day's head and slam it down on top of the car.

After briefly grappling to get his hands behind his back, Day was handcuffed. Like Tennariello, Sikorski testified that no force was used on Day after he was cuffed, but a more thorough search was done where marijuana was retrieved from his jacket pocket. Sikorski did not observe any bleeding or injuries to Day nor did he hear Day complain of any injuries.

Respondent recalled initially observing Day make an erratic turn, swerving in front of another vehicle and then failing to stop for a stop sign. After Day's car was pulled over, Respondent went to the passenger window while Tennariello engaged Day, who was immediately confrontational and loud, though Respondent could not decipher exactly what he

was saying. He also heard Tennariello ask Day for his ID multiple times. The female passenger did not roll down her window so Respondent knocked and motioned for her to do so. She rolled it down a few inches and Respondent immediately "caught a strong aroma" of marijuana." Day, he recounted, became even louder, cursing at her for rolling down "his" window, rolling it back up and being "demonstrative with his movements" in a way that Respondent perceived as "almost threatening" toward her. Respondent communicated, though he did not recall whether with words or a gesture, to Tennariello to take Day out of the vehicle.

He recalled that Day calmed down a bit as he walked toward the back of the car with Sikorski. Respondent began speaking with the female in the vehicle until he saw Sikorski grappling with Day, "almost like a wrestling match standing up," moving side to side, and rushed over to help him. Respondent was concerned for safety, explaining, "we have somebody who is obviously angry . . . he wasn't searched either so I don't know if he has any weapons . . . I see my cop . . . in a physical struggle with this guy and I'm concerned that somebody is going to get hurt so I run to the back to help." Respondent acknowledged that he was "forceful" in grabbing Day's right arm and placing his left hand on his upper back. He detailed, "we braced him against the car, we pushed him against the car to get control," noting that Day was not bent over. He testified that he did not touch Day's head and "absolutely" did not slam his head against the hood of the vehicle. He believed the force used was justified, asserting, "He was pushed against the car. He was somebody who had initiated physical contact with the police, and he was un-cuffed and unsearched. We used the minimum amount of force necessary to put him under control." Respondent testified that "nobody touched" Day "after he was handcuffed." He observed no injuries to Day. He asserted that if he had observed an injury, he would have called EMS.

Analysis Regarding Case No. 2016-16054

It is charged that Respondent "wrongfully used force, in that he hit Julian Day against a vehicle without police necessity." Day asserted that after he was placed in handcuffs, the officer who had been standing at the passenger window walked to the rear of the car, lifted Day's head up with his hands and then slammed the left side of Day's head onto the rear of the vehicle. Day did not identify Respondent in the Trial Room as the officer who had slammed his head. The only evidence offered by the Administrative Prosecutor to establish that it was Respondent, not Tennariello who also aided Sikorski in gaining control of Day, who used this force against the handcuffed Day, was Day's testimony that the officer who had hit his head on his car had "some type of authority" because the other two officers had looked to him when they approached the driver's side of Day's car.

I find it significant that the Administrative Prosecutor agreed that when Day was standing at the rear of his vehicle, Day was "out of control" (Tr. p. 465), and that Day had physically resisted the officers' attempts to search his pockets. Thus, the Administrative Prosecutor conceded that the officers had the right to use physical force against Day sufficient to gain physical control of him and handcuff him. However, the Administrative Prosecutor asserted that Day's claim that his head was hit against the vehicle after he had been handcuffed, when no use of force was justified, should be credited. Respondent testified that although he had pushed the out-of-control Day against the car so that he could be handcuffed, no force was used against Day after he was handcuffed. This testimony was corroborated by the testimony of Tennariello and Sikorski. The Administrative Prosecutor argued that the post-arrest photo of Day's left ear [CCRB Ex. 5, A&B] and the medical records showing that he had dried blood in his left ear [CCRB Ex. 6] show that the left side of Day's head had hit the car hard. However, this evidence does not support Day's claim that he was hit against the vehicle after he was in handcuffs. Thus,

the only evidence in the record that Day's head was hit against the vehicle after he was placed in handcuffs is Day's own testimony.

I find that Day's testimony, standing alone, is insufficient to support a finding that Respondent hit Day's head against his car after he had been handcuffed. Day's admission that at the precinct he had apologized to the officers for his loud and "rowdy" behavior is inconsistent with his claim that even though he had already been handcuffed, his head was then gratuitously slammed into the rear of his car. Also, Day offered testimony at this trial, which was inconsistent with some of his prior statements regarding this incident. For example, at this trial he asserted that he had not been arguing with [REDACTED] whereas at his CCRB interview he had stated that he had been arguing with her.

Based on the above analysis, I find that the Administrative Prosecutor did not meet her burden of proof. The record does not contain evidence which sufficiently proves the charge in Case No. 2016-16054 by a preponderance of the credible evidence. Therefore, Respondent is found Not Guilty of the subject charge.

PENALTY RECOMMENDATION

In order to determine an appropriate penalty, Respondent's service record was examined. *See Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on April 15, 1997. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached Confidential Memorandum.

In ascertaining an appropriate penalty recommendation here, the penalties imposed in previous CCRB prosecutions involving similar charges are instructive. With regard to Respondent's discourteous action of slapping Jennings's cell phone out of his hand, in *Case No. 2014-11867* (May 25, 2016), a 16-year police officer who had a prior disciplinary adjudication forfeited two vacation days as a penalty after he pleaded guilty to having been discourteous to an

individual by picking up the individual's backpack inside a store and throwing it outside the store. The officer in that case also pleaded guilty to threatening to use force against the individual and discourteously telling the individual, "You're a dickhead."


With regard to Respondent's misconduct of authorizing the issuance of a summons which charged Jennings with Disorderly Conduct without sufficient legal authority, in *Case No. 2014-12503* (July 27, 2016), a nine-year officer who had no prior disciplinary adjudications forfeited five vacation days as a penalty after he pleaded guilty to having issued two disorderly conduct summonses to an individual without sufficient legal authority. The officer in that case also pleaded guilty to having asked the individual, "Who the fuck do you think you are?"

Also, in *Case No. 2014-12669* (Sept. 13, 2016), a 16-year sergeant forfeited five vacation days as a penalty after he pleaded guilty to having been discourteous to an individual and having issued him a summons for reckless driving without sufficient legal authority.

In determining an appropriate penalty recommendation here, I have also taken into consideration that during Respondent's 20 years of service from 1997 to 2017, he was not found guilty of any formal charge of misconduct.

Therefore, I recommend that Respondent forfeit seven vacation days as a penalty.

Respectfully submitted,

Handwritten signature of Robert W. Vinal in black ink.

Robert W. Vinal
Assistant Deputy Commissioner Trials

APPROVED

DEC 07 2017

JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
LIEUTENANT IAN RULE
TAX REGISTRY NO. 919661
DISCIPLINARY CASE NOS. 2016-15348 & 2016-16054

Respondent was appointed to the Department on April 15, 1997. He received an overall rating of 4.5 on his 2015 annual performance evaluation, 4.5 on his 2014 annual evaluation, and 4.5 on his 2013 annual evaluation.

He has been awarded two Meritorious Police Duty medals and four Excellent Police Duty medals [REDACTED]

On October 26, 2015, he was placed on Level 1 Force Monitoring as the result of having received three or more CCRB complaints during a one year period. This Monitoring ended on November 13, 2015.

For your consideration.

Robert W. Vinal
Assistant Deputy Commissioner – Trials